

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 13.10.2015

RSA No. 2352 of 2014 (O/M)

Sukhwinder Singh and others

..... Appellants

Versus

Malook Singh and others

..... Respondents

RSA No. 2379 of 2014 (O/M)

Sukhwinder Singh and others

..... Appellants

Versus

Malook Singh and others

..... Respondents

RSA No. 2444 of 2014 (O/M)

Sukhwinder Singh and others

..... Appellants

Versus

Malook Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. G.S. Attariwala, Advocate, for the appellants
in all the appeals.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

This judgment of mine will dispose of RSA Nos. 2352, 2379 and 2444 of 2014, titled as Sukhwinder Singh and others Versus Malook Singh and others. For brevity, the facts have been taken from RSA No. 2352 of 2014.

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Impugned in the present regular second appeal is the judgment and decree dated 2.12.2013, passed by the learned Additional District Judge, Kapurthala, affirming the judgment and decree dated 14.10.2011, passed by the learned Additional Civil Judge (Senior Division), Kapurthala, vide which the suit of the plaintiffs was partly decreed.

Brief facts of the case are that the plaintiffs had challenged three sale deeds dated 8.9.1998, 6.10.1998 and 23.1.1999, executed by defendant No. 1 (since deceased), being the general attorney of Ram Singh (deceased), who was the original owner of the land, on the basis of General Power of Attorney dated 10.7.1998, in favour of defendants No. 2 (since deceased) and defendant No. 3 (present appellant), who happen to be his cousin and son respectively. The plaintiffs also claimed that Ram Singh (deceased), who died on 26.1.1999. He served in the Army and after his retirement, he settled in village Sangojla, District Kapurthala. He had a daughter, namely, Mohinder Kaur who was permanently settled in United Kingdom (UK) and on the sponsorship of his daughter, Ram Singh migrated to UK after his retirement from the Army. The plaintiffs also claimed that Ram Singh (deceased) was the real uncle of the plaintiffs. They also claimed that that Ram Singh came to India on 19.4.1998 when he was about 100 years of age. Ram Singh was confined to bed and the plaintiffs had been

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looking after him. Due to service rendered by plaintiffs, Ram Singh executed a Will dated 24.5.1998 in favour of the plaintiffs.

Defendant No. 1, on the other hand, claimed that when Ram Singh came to India from UK, he visited village Sangojla and stayed with him. He looked after Ram Singh and that on account of services rendered by defendant No. 1 and his son, Ram Singh appointed Swaran Singh (defendant No. 1) his general power of attorney on 10.7.1998 by way of registered deed executed before Sub Registrar, Kartarpur, and he also executed a Will of the same date in his favour. Defendants No. 1 and 2 performed the last rites and ceremonies of Ram Singh when he was about 90 years of age. The execution of sale deeds was not denied.

After hearing both the parties, the lower Court discarded the unregistered Will dated 24.5.1998, set up by the plaintiffs on various grounds.

I have heard the learned counsel for the appellants and have also carefully gone through the file.

The Will was unregistered. It was held by the lower Court that the Will (Ex.P1) has been scribed by Vijay Kumar, who happens to be a Clerk of Shri Pishora Singh Dhaliwal, Advocate, who was representing the plaintiffs before the lower Court. He was working in District Courts premises, Kapurthala, and is stated to have been brought in a car by Malook Singh. The lower Court held

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that when a clerk could be brought from district courts premises to village Sangojla, why a regular deed writer was not brought for scribing the Will as the plaintiffs had admitted their village falls in Dhilwan where there are writers. The thumb impression of Ram Singh was ink smudged. There was no reason why the ink on the thumb was not taken from the ink pad for putting thumb impression of Ram Singh on the Will, which was stated to be brought by Vijay Kumar, Clerk. The lower Court also disbelieved that the plaintiffs were serving the deceased. The plaintiffs failed to produce the passport and ticket of the deceased, which were rather produced by the defendants. Further, the receipt regarding the performance of last rites and ceremonies was also produced by the defendants. The lower Court also noticed that Dharam Singh (PW2), an attesting witness of the Will, deposed that he is related to Hari Singh, who is none other than the father of the plaintiffs. There is no reason why the deceased will disinherit his daughter Mohinder Kaur, who had sponsored him and took him to England and probably might have been rendering one or other kind of services and looking after him. Therefore, the Will dated 24.5.1998 (Ex.P1) was held to be suspicious and was discarded.

Coming to the GPA dated 10.7.1998 (Ex.DW3/F) and the Will of the same date in favour of defendant No. 1, it was held by the lower Court that defendant No. 1 took active part in the execution of

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the GPA and the Will. It was further held that Ram Singh was brought from village Sangojla and that village Sangojla falls in district Kapurthala and sub district Dhilwan. It was admitted by witnesses of defendant that while going to Jalandhar from Sangojla, one has to cross Kapurthala. Therefore, there is no reason why the GPA and the Will were not executed at Kapurthala or Dhilawan. Further, it was noticed that a wrong address of Ram Singh of Jalandhar City, i.e. 48, Ali Mohalla, Jalandhar City, was given. It was proved from the statement of Taxation Clerk, Municipal Corporation, Jalandhar City, that Ram Singh never resided there. The Lambardar of Jalandhar had attested the Will. The lower Court also doubted the same. In the Will, the age of the deceased was mentioned as 50 years against 90 years as claimed by the defendants and 100 years as claimed by the plaintiffs. No explanation had been given as to why the age of Ram Singh was reduced to half of his age. The defendants had also claimed that they used to look after the urine and toilet of Ram Singh, which means that Ram Singh was so much medically unfit that he used to pass urine/stool on his bed. If this was the state of health of Ram Singh, he could not have gone out of the village. Defendant No. 1 is not related to deceased Ram Singh nor he was admittedly called on any function by Ram Singh. It is also to be noticed that after the execution of GPA within few months, the sale deeds were executed by defendant No. 1 in favour of his

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son and cousin. Keeping in view the close relationship of the vendees with defendant No. 1, they cannot be termed as bonafide purchaser. Infact, the overall evidence gives the impression that Ram Singh, an Ex-Serviceman, who was between 90 to 100 years of age and was permanently settled in UK, had come from UK to India and thereafter, both the parties started making efforts to grab his property by concoting one or the other story. The deceased is stated to have come to India on 19.4.1998. He died on 26.1.1999. The plaintiffs had not made Mohinder Kaur as party to the suit though she was necessary party in the succession dispute being Class-I heir of Ram Singh. If the Will of the plaintiffs and defendants is discarded and the GPA is also discarded, the property is to go to the legal heirs of Ram Singh.

Learned counsel for the appellants has referred to the authorities of the Apex Court in Meera Chauhan Versus Harsh Bishnoi and another, 2007 (1) RCR (Civil) 597 and National Institute of Mental Health and Neuro Sciences Versus C. Parameshwara, 2005 (2) SCC 256 to press that the inherent power under Section 151 CPC can be exercised very sparingly.

I am of the view that when neither the plaintiffs nor the defendants are to get the property, the lower Court rightly directed that the property of Ram Singh should be mutated in favour of his natural heirs, which is otherwise also the legal duty of the revenue

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authorities once the Will, sale deeds and GPA are set aside. Therefore, what the lower Court has ordered, is the natural consequence, which follow the result of the suit, discarding claim of both the parties. Moreover, the circumstances of the case are such that even if the inherent powers are to be exercised, this is a fit case where such powers should have been exercised.

In these circumstances, when both the parties wanted to grab the land of deceased Ram Singh, I am of the view that to do real and effective justice, the lower Court had rightly directed the District Collector, Kapurthala, to mutate the land in favour of the legal heirs of Ram Singh even though, there was no specific prayer with regard to the same. I find that the lower Court has very minutely examined each and every fact and recorded the findings thereon. The findings were concurred by the learned Additional District Judge, Kapurthala, vide judgment and decree dated 2.12.2013. I agree with the findings recorded by both the Courts below on merits. Moreover, no substantial question of law arises in the present appeal. Hence, all the three appeals stand dismissed.

Copy of this order be sent to the District Collector, Kapurthala, for information and necessary action.

(KULDIP SINGH)
JUDGE

13.10.2015
sjks